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November 12, 2004

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW – Portals
Washington, DC 20554

Re: ***Unbundled Access to Network Elements*, WC Docket No. 04-313;**
***Section 251 Unbundling Obligations for Incumbent Local Exchange Carriers*, CC Docket No. 01-338**

Dear Ms. Dortch:

Verizon is providing the attached materials, which contain data and information previously filed by Verizon, to become a part of the record in these proceedings. These materials provide a high-level summary of Verizon's position and supporting facts on why the Commission should not require unbundling of high-capacity facilities.

Please place this notice in the record of the above proceedings.

Sincerely,

Attachments

Urban Myths about Unbundling

Is there really a need to unbundle high-capacity facilities?

MYTH 1: There is limited competition for high-capacity facilities and services.

FACTS:

- High-capacity facilities and services are uniquely suited to competitive supply – given that high-capacity traffic is heavily concentrated both geographically and among larger customers. This was, accordingly, the first segment of the market opened to competition, and the FCC successfully promoted the development of competing facilities through its collocation policies that allowed carriers to deploy some of their own facilities and supplement them with ILEC facilities purchased from special access tariffs.
- There has long been extensive competition for high-capacity facilities and services, with competitors investing billions even before the 1996 Act to deploy facilities in the downtown urban areas where business customers are heavily concentrated.
- Today, competing carriers control one-third or more of the high-capacity market segment as a whole, and account for a majority of the high-capacity services provided to large enterprises that are the most valuable customers within this market segment.
- Competing carriers are serving customers of all sizes and shapes – including small and medium-size businesses such as antique dealers, book stores, dry cleaners, florists, gas stations, and hair dressers, to name a few – using a combination of their own facilities, facilities they have leased from alternative providers, and special access obtained from ILECs.

MYTH 2: Competing carriers can't compete without access to high-capacity UNEs, especially high-capacity loops.

FACTS:

- Competing providers are making extensive use of their own facilities or those of other competitive suppliers. For example, competing carriers serve more than 30,000 known buildings connected directly to their fiber rings, and an additional 500,000 or more buildings connected indirectly to their fiber rings using facilities leased from alternative providers, including ILEC special access.
- To the extent that CLECs do purchase high-capacity facilities from ILECs, they rely primarily on special access, not UNEs. For example, of the high-capacity loops that competing carriers purchase from Verizon, nearly 93% of the DS1 loops, more than 98% of the DS3 loops, and 94% of the loop and transport combinations are purchased as special access service rather than UNEs.
- Even if wireless and the three largest long distance carriers are excluded, of the high capacity facilities competing carriers purchase from Verizon, 87% of the DS1 loops and 98% of the DS3 loops are purchased as special access service rather than UNEs.

MYTH 3: Special Access prices have been increasing.

FACTS:

- This claim ignores the price that customers actually pay.

- Since 2001, when ILECs were granted pricing flexibility for special access services, prices paid by Verizon special access customers have decreased by an average of 22% per year.
- During that same time frame, the average price paid for a DS1 special access circuit in Verizon's region decreased by an average of 6.5% per year.

MYTH 4: Special Access pricing plans preclude deployment of competitive facilities.

FACTS:

- Verizon offers a variety of volume and term plans, none of which precludes facilities-based competition. Competing carriers are free to terminate each of these plans, and any applicable termination charge does not make the carrier any worse off than it would have been, had it decided not to enter that term or volume agreement in the first instance.
- Under Verizon's basic term plan, a carrier that terminates the circuit before term pays no more than the difference between the rates for the selected term plan and the rates for the longest term plan they could have satisfied. For example, if the customer signed up for a 7 year term plan and only kept the circuit for 3 years, it would only be charged as if it had purchased a 3 year term plan.
- Under Verizon's commitment term plan, a carrier may move individual circuits off the plan without any termination liability, as long as the carrier maintains the agreed-upon volume level for that service type. For example, a carrier could reduce the number of special access circuits in one area as it builds out its own facilities, while adding special access circuits in another area as it begins to build a customer base there in advance of deploying facilities there as well, and to continue the pattern in additional areas.

MYTH 5: Competing carriers use special access only because they can't obtain access to UNEs due to rejections of UNE orders on "no facilities" grounds.

FACTS

- The fact that there are not facilities available for UNEs in some instances does not explain why carriers overwhelmingly purchase special access. Even if one assumes that all UNE orders that could not be filled for lack of facilities between January and August 2004 would have been purchased as UNEs, and not special access, the ratio of special to UNEs would not substantially change – 93% of DS1s and 98% of DS3s that CLECs purchased would still have been purchased as special access, not UNEs
- In Verizon's case, even where there are no facilities, Verizon will build the facilities under the terms of its special access tariffs, and the carrier can convert those facilities to UNE pricing after a period of one to three months depending on the state.

MYTH 6: Competing carriers cannot operate profitably without access to ILEC facilities at UNE rates.

FACTS

- The standard industry measure for determining whether an entrant in a capital intensive business, like telecommunications, is financially healthy is whether it is achieving positive Earnings Before Interest Taxes, Depreciation & Amortization or "EBITDA," not whether it is earning a positive net income (which includes the depreciation costs for network investments).
- Many competing carriers that rely heavily on their own facilities and special access – as opposed to UNEs – report a positive EBITDA margin. Examples include Time Warner Telecom, PAETEC, US LEC, Pac-West, and Telepacific.

MYTH 7: Special access prices are typically 10 times more expensive than UNE rates.

FACTS:

- Using discount plans, the difference between prices that CLECs actually pay for special access and UNEs is much smaller. For example, the average price of a special access DS1 circuit is approximately $240, whereas the average price of a UNE DS1 circuit is approximately $170.
- Verizon's data show that one of the few carrier customers that uses UNEs for a significant portion of its purchases could achieve cost savings of $500,000 a month by converting its existing UNE circuits and combining them with its existing special access purchases under one of Verizon's special access discount term plans.

MYTH 8: Competing carriers can't feasibly deploy stand-alone DS1 facilities.

FACTS:

- Competing carriers generally do not deploy DS1 facilities, but instead deploy fiber that can be "channelized" to provide DS1s or any other unit of capacity with off-the-shelf equipment. Carriers also have the ability to aggregate traffic from many customers – both their own and those of other competitive carriers – which enables them to take advantage of the higher bandwidth available on the fiber.
- Demand for DS1s is generally concentrated in the same areas as demand for high-capacity services generally (e.g., 80% of Verizon's demand for DS1 special access is concentrated in approximately 12% of Verizon's wire centers where special access is provided). CLEC fiber, which has been deployed in these areas of high concentration, is already in position to serve much of the demand for DS1s.

MYTH 9: Competing carriers can't serve small and medium businesses.

FACTS:

- Verizon's data show that CLECs are using a combination of their networks and special access to serve businesses of all sizes, in both large and small markets across the country, including small and medium-sized businesses such as antique dealers, book stores, dry cleaners, florists, gas stations, and hair dressers, to name a few.
- Competing carriers are capable of serving many small and medium-sized business customers with their networks, either alone or in combination with leased facilities, given that these customers – which typically use DS1 facilities – are highly concentrated geographically in the areas where CLECs have deployed fiber. Both large carriers such as AT&T and MCI, as well as smaller carriers like XO, McLeod, and Time Warner Telecom offer DS1-level service.

MYTH 10: Competing carriers cannot deploy their own facilities and need access to UNEs because they cannot obtain access to buildings and rights of way.

FACTS:

- With respect to new buildings, CLECs are in the same position as ILECs in terms of gaining access. As for existing buildings, most building owners do not limit access to a single provider. The FCC has already banned exclusive access arrangements in commercial buildings. And, if an ILEC is in a building, a CLEC has the right to use the ILEC's in-building risers and conduits to reach its customers.
- In any event, the facts show that competing carriers are able to serve a very large number of buildings and to serve customers within those buildings using their own or alternative facilities.

MYTH 11: Competing carriers need UNEs to provide wireless and long distance services and to serve large enterprise customers.

FACTS:

- Wireless services are thriving without UNEs. The number of wireless subscribers has grown from 129 million to 161 million since the Triennial Review, and about 14% of subscribers now use their wireless phone as their primary phone.
- Long distance service has long been provided without UNEs. AT&T, MCI, and Sprint continue to provide 75% of the long-distance services sold to large business customers, and in the consumer long-distance market, prices are plummeting and packages of "unlimited" long-distance service are becoming the norm.
- Competing carriers dominate the provision of high-capacity services to large enterprise customers. AT&T, MCI, and Sprint account for more than half of all total revenues from large enterprise customers, and three-quarters of the market for Frame Relay and ATM services. And, there are many other competitors for these services as well.

MYTH 12: Competing carriers need to be able to convert existing special access to UNEs.

FACTS:

- CLECs using existing special access services are already successfully serving customers, which itself proves that those competitors don't need to convert their special access circuits to UNEs.
- Competing carriers have chosen not to convert their special access facilities to UNEs even when they could, which further demonstrates they are able to use special access to compete successfully. For example, one of Verizon's largest purchasers of special access has converted only a small fraction (1/30) of its special access circuits to UNEs, and has waited an average of nearly 2 years, and in some cases more than 7 years, with respect to those circuits it did convert.

MYTH 13: Competing carriers need unbundled access to dark fiber.

FACTS:

- Many competing carriers – such as AT&T, Level 3, KMC Telecom, Cavalier, Xspedius, AboveNet, American Fiber Systems, and Looking Glass – offer dark fiber to other carriers.
- Equipment manufacturers and independent conduit providers agree that if CLECs are permitted to rely on unbundled dark fiber, CLECs will be more likely to rely on ILEC facilities rather than deploy their own or use the facilities of other competitive suppliers.

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Fact Sheet

High-Capacity Facilities and Special Access

▼ High-Capacity demand is concentrated geographically

- 80% of Verizon's high-capacity demand is concentrated in slightly more than 8% of the wire centers that generate special access revenue.
- More than 86% of these wire centers are located in the 40 MSAs where demand for Verizon's high-capacity services is greatest ("top 40 MSAs").
- 80% of Verizon's DS1 special access demand is concentrated in 12% of the wire centers that generate special access revenue, and 80% of these wire centers are located in the top 40 MSAs.
- 80% of Verizon's DS3 special access demand is concentrated in just 4% of the wire centers that generate special access revenue, and 90% of these wire centers are located in Verizon's top 40 MSAs.

▼ High-Capacity competition is concentrated in wire centers with 5,000+ business lines

- Only 15% of the Verizon wire centers that generate high-capacity special access revenue (950 out of 6,300) contain 5000 or more business lines.
- Carriers have deployed fiber facilities in nearly 80% of the wire centers with 5000 or more business lines in Verizon's top 40 MSAs, with an average of 4 CLEC fiber networks in those wire centers.
- In virtually all of the wire centers with 5000 or more business lines in Verizon's top 40 MSAs, there are also CLECs using Verizon special access services to serve their end-user customers.

▼ CLECs have deployed high-capacity transport facilities

- Nationally, there is an average of 19 competing networks in each of the country's largest 50 MSAs.
- CLECs have deployed at least 314,500 route miles of fiber:
  - AT&T – 21,000 local route miles in 70 MSAs
  - XO – 23,800 total route miles in 34 MSAs
  - Time Warner – 12,247 local route miles in 41 MSAs
  - MCI – 9,000 local route miles in 63 MSAs
  - TelCove – 8,700+ local route miles in 48 MSAs
  - Yipes – 21,000 total route miles in 10 MSAs
  - Level 3 – 4,000 local route miles in 25 MSAs
  - ICG – 2,166 local route miles in 22 MSAs
  - Choice One – 1,420 local route miles in 23 MSAs
- In Verizon's top 40 MSAs, more than 80 different providers have deployed fiber facilities including:
  - *Traditional* providers such as AT&T, MCI, Global Crossing, Level 3, Looking Glass, Time Warner, and XO Communications.
  - *Non-traditional* providers such as Con Edison, Dusquesne Light, PPL Telcom, and Teco Energy.
- These CLEC networks connect to key traffic aggregation points, allowing CLECS to interconnect to other CLEC networks and to wire centers even without having a direct connection.

CLECs have deployed high-capacity loop facilities

- CLECs themselves report that they serve over half a million lit buildings using a combination of their own facilities, which they describe as "direct connections," and what they describe as "indirect connections," using other carriers' fiber, including ILEC special access. Even looking at direct connections alone, CLECs are connected to approximately 32,000 known buildings. Verizon provided examples of dozens of companies that have lit buildings including:
  - Global Internetworking, a company that aggregates service from competitive networks and special access and resells that capacity to carriers, reports that is has access to over 535,000 lit buildings.
  - AT&T reports that it serves a total of 186,000 lit buildings on its network, using its own direct connections and leased facilities, including special access.
  - Time Warner reports that it serves 17,500 buildings on its network (4,576 directly and the remainder through indirect connections).
- CLECs have lit buildings in each of Verizon's top 40 MSAs.
- CLECs have focused on buildings with the greatest telecommunications expenditures:
  - 65% of buildings with more than $6 million in annual telecommunications expenditures lit.
  - 57% of buildings with $4-6 million lit.
  - 50% of buildings with $2-4 million lit.

CLECs make their facilities available to other carriers on a wholesale basis

- CLECs provide DS1 and DS3 transport to others:
  - "AT&T Wholesale Services offers … an array of Local … Dedicated Private Line & SONET services from a single channel to OC192 …."
  - Time Warner's "services for carriers include: …Dedicated High-Capacity Services" at "DS1/DS3" capacities.
  - XO's "Carrier Private Line services provide high-speed, dedicated point-to-point connectivity for voice, data, and video applications," "from DS-1 to OC-n."
  - Level 3 offers "dedicated, point-to-point … metro transport service … at rates of DS-3, OC-3, … OC-12/12c, … OC-48/48c …."

CLECs that use Verizon's network use predominately Special Access, not UNEs

- 93% of the DS1 loops CLECs purchase are purchased as special access compared to 7% purchased as UNEs.
- 99% of the DS3 loops CLECs purchased are purchased as special access compared to 1% purchased as UNEs.
- 94% of the DS1 loop and transport combinations CLECs purchased are purchased as special access compared to 6% purchased as UNEs.
- With the three largest IXCs and wireless carriers removed from the analysis, CLECs still purchased 87% of their DS1 loops and 98% of their DS3 loops as special access services instead of as UNEs.

CLECs are successfully serving customers of all types and sizes using ILEC Special Access

- CLECs are using special access services to serve large business customers as well as small and medium-sized businesses such as antique dealers, bookstores, dry cleaners, florists, gas stations, and hairdressers.
- In fact, the majority of Verizon's high-capacity special access revenues, as much as 80%, comes from sales to Verizon's carrier customers, rather than sales to end user business customers.
  - 85% of Verizon's revenues from special access DS1s come from sales to carriers.
  - 84% of Verizon's revenues from special access DS3s come from sales to carriers.

▼ UNE orders rejected for lack of facilities do not affect the Special Access to UNE comparison

- Even if one assumes that all UNE orders rejected for lack of facilities between January and August 2004 would have been purchased as UNEs, the ratio of special access to UNEs does not change much:
  - 93% of DS1s CLECs purchased would have been purchased as special access, not UNEs.
  - 98% of DS3s CLECs purchased would have been purchase as special access, not UNEs.
- Also, pursuant to Verizon's tariffs, carriers that purchased special access DS1s could convert them to UNEs after a minimum service period of only one to three months.
  - Instead, one carrier that has sought UNEs held its DS1 circuits for 15 months on average, and many special access circuits that were purchased after UNE orders were rejected still have not been converted.

▼ Special Access pricing is competitive and prices paid by customers have declined

- Prices customers actually pay for special access have declined faster during the pricing flexibility period than before, an average of 22% per year for Verizon compared to 14% per year under price caps. Even looking just at DS1 circuits, prices paid by customers have dropped by 6.5% per year since 2001.
- Carriers are purchasing special access services from Verizon at discounts of 35-40% off the base rates using discount plans.
- The differences between prices CLECs pay for special access and what they pay for UNEs is nowhere near the ten-fold difference claimed by some CLECs:
  - The average price of a special access DS1 circuit is approximately $240.
  - The average price of a UNE DS1 circuit is approximately $170.
- In fact, one carrier customer could achieve cost savings of $500,000 a month by combining its existing UNE circuits with its existing special access services under one of Verizon's special access discount term plans.

▼ Use of Special Access has promoted continued deployment of competitive facilities

- Prior FCC policies promoted the development of competing facilities through its collocation rules that allowed carriers to deploy some of their own facilities and supplement them with ILEC facilities purchased from special access tariffs.
- Like competition for long distance, competitors first lease facilities to serve customers, and as demand grows, they deploy their own facilities to serve their growing customer base.
- In addition, Verizon's special access term pricing plans allow carriers to move their circuits off the plans as they build out their networks:
  - Under Verizon's basic term plan, a carrier that terminates the circuit before term pays no more than the difference between the rates for the selected term plan and the rates for the longest term plan they could have satisfied.
  - Under Verizon's commitment term plan, a carrier may move individual circuits off the plan without any termination liability as long as the carrier maintains the agreed-upon volume level for that service type. For example, a carrier could reduce the number of special access circuits in one area as it builds out its own facilities, while adding special access circuits in another area as it begins to build a customer base in advance of deploying facilities there as well, and to continue the pattern in additional areas.

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Special Access Services

A success story of FCC deregulation

One of the success stories for the FCC in recent years has been its pro-competitive deregulation of special access prices. The FCC's gradual deregulation of special access has helped to nourish a growing, facilities-based competitive market for high-capacity services. This competition offers business customers a choice of service providers and the ability to protect their data and their business by diversifying their telecommunications needs across different networks.

This success, however, is threatened by the FCC's current rulemaking proceeding, where carriers are seeking unbundled access, at extremely low, regulated rates, to the high-capacity facilities that incumbents sell as special access in an already competitive market. As the FCC previously found, such unbundled access would "undercut the market position of many facilities-based" competitors in this market.[1]

▼ THE HIGH-CAP MARKET IS COMPETITIVE

The high-capacity facilities at issue here are dedicated to the needs of a particular customer. These facilities are typically used by large businesses and by other telephone companies for transporting large volumes of data or aggregations of voice calls between two points.

The market to provide these high-capacity services was one of the earliest competitive telecommunications markets, with numerous Competitive Access Providers, or "CAPs," offering service in competition with the incumbents. The CAPs initially competed by purchasing incumbents' special access services to make their local, or last-mile, connections, but also built their own, extensive networks. Although there were many CAPs before the 1996 Act, most have been purchased by the largest long-distance carriers, which were among their primary clients.

Today, the market for high-capacity services is a mature, competitive market. A variety of carriers – including traditional long-distance companies and newer competitors – compete successfully with incumbents in this market, by using their own networks, leasing capacity on other carriers' networks, and purchasing special access from incumbents.

Indeed, c*ompetitors*, not incumbents such as Verizon, are the leading providers for enterprise customers, the Fortune 1000 companies, and large public institutions that account for the vast majority (85 percent in Verizon's region) of high-capacity services that businesses purchase. AT&T, MCI, and Sprint account for more than half of all revenues from large enterprise customers, are the primary service provider for nearly three-quarters of such customers, and also dominate the provision of packet-switched services to these customers.

Nor is competitive high-capacity service limited to the largest customers. Instead, competitive high-capacity service is also available to smaller businesses, even those needing the lowest of high-capacity services, known as DS1s. Competing carriers that operate fiber networks – including the largest, AT&T and MCI, as well as smaller and medium sized carriers such as XO, Level 3, and Lightpath – routinely state that they offer services

[1] See Supplemental Order Clarification, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 9587, ¶ 18 (2000).

at the DS1 level. And competing carriers are also using Verizon's special access service to provide high-capacity service at the DS1 level to small businesses of all types, including antique dealers, book stores, dry cleaners, florists, gas stations, and hair dressers, to name a few.

▼ TELRIC PRICING WOULD BE HARMFUL TO HIGH-CAP COMPETITION

The issue currently before the FCC is *not* whether competing carriers will have access to incumbents' networks for the purpose of providing high-capacity services. CAPs obtained access to those facilities *before* the 1996 Act as special access, and special access continues to be available today and will remain available tomorrow no matter how the FCC rules. Indeed, special access is an important wholesale business for Verizon and other incumbent carriers; the bulk of special access – 80 percent for Verizon – is sold on a wholesale basis to other carriers.

Instead, the issue before the FCC is whether competitors will get high-capacity facilities from incumbents at regulated TELRIC rates, rather than at special access rates. In the mass market, the availability of TELRIC-priced network elements and, in particular, the so-called UNE Platform, severely undermined facilities-based competition.

And the Commission, in the *Triennial Review Order* and a series of follow-on orders, has recognized that the availability of TELRIC-priced elements would impose the same harms in the broadband market, and has taken steps to eliminate unbundling of broadband facilities. The same problems exist in the market for high-capacity services, as confirmed by the comments of telecommunications equipment manufacturers, which oppose requiring incumbents to provide high-capacity facilities at TELRIC rates.

▼ BUSINESSES WILL CONTINUE TO HAVE HIGH-CAP COMPETITIVE CHOICES

Small and large businesses will continue to have access to competitive sources of high-capacity service if the FCC does not require incumbents to provide access to high-capacity facilities at TELRIC rates. Competing providers have already deployed approximately 324,000 route miles of fiber, with at least one fiber-based, competitive network in at least 140 of the top 150 MSAs and an average of about 19 such networks in each of the top 50 MSAs.

And, today, when competitors use Verizon's network to provide high-capacity services, they overwhelmingly purchase special access services, not TELRIC-priced unbundled network elements, or "UNEs." This is true of the largest carriers, such as AT&T and MCI, wireless carriers, and the wide-range of smaller carriers that claim to need UNEs despite the fact that they are actually competing today using special access services.

For competitors as a whole, about 93 and 98 percent of the DS1 and DS3 level loops they obtain from Verizon are purchased as special access, not UNEs. Even when AT&T, MCI, Sprint, and wireless carriers are excluded, it remains the case that about 87 and 98 percent of the DS1 and DS3 level loops obtained from Verizon are purchased as special access.

▼ SPECIAL ACCESS PRICES HAVE FALLEN

And Verizon's prices for special access continue to decline, falling by an average of 22 percent annually since Verizon was given "pricing flexibility" in 2001. This is true not only for Verizon's overall special access prices, but also for DS1 service in particular (where prices fell by 6.5 percent annually between January 2001 and April 2004) and in areas where Verizon has entered the long-distance market. Indeed, in states like New York – where Verizon has had long-distance authority for some time – the drop has been even greater – about 17 percent since 2001 (and by a larger amount in real terms when inflation is taken into account).

In short, there is no need for – and substantial harm to the economy would result from – any FCC decision to require incumbents to provide high-capacity facilities at TELRIC rates.

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